

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA**

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In re:	)	
	)	Chapter 11
MERCY HOSPITAL, IOWA CITY, IOWA, <i>et al.</i> ,	)	
	)	Case No. 23-00623 (TJC)
Debtors.	)	
	)	Jointly Administered

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**DECLARATION OF MARK E. TONEY IN SUPPORT OF  
DEBTORS' PROPOSED SALE TO THE UNIVERSITY OF IOWA**

I, Mark E. Toney, being duly sworn, state the following under penalty of perjury and that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Member and Senior Managing Director with ToneyKorf Partners, LLC ("ToneyKorf Partners"), a management and advisory firm that provides expert services to healthcare organizations in various professional areas, including bankruptcy and corporate restructuring. I am the Chief Restructuring Officer (the "CRO") of Mercy Hospital, Iowa City, Iowa (the "Hospital") and its subsidiaries and affiliates that are debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"). I serve as CRO of the Debtors pursuant to an engagement letter approved by the *Order Authorizing Debtors to Retain ToneyKorf Partners, LLC as Interim Management of the Debtors, Effective as of the Petition Date Pursuant to Section 363 of the Bankruptcy Code, and Granting Related Relief* [Docket No. 259].

2. I submit this declaration (the "Declaration") in support of the Debtors' proposed sale to the State of Iowa's University of Iowa (the "University"). The statements in this Declaration are, except where specifically noted, based on (a) my personal knowledge of the Debtors' business operations; (b) my opinion based on my experience, knowledge, and

information concerning the Debtors' operations; (c) my participation in various discussions and negotiations surrounding the sale and auction process; and (d) my review of the Debtors' books and records and relevant information that I have obtained from the Debtors' management and other employees, the Debtors' advisors, and employees of ToneyKorf Partners working directly with me and under my supervision, direction, or control.

3. I am over the age of 18 and am authorized to submit this Declaration on behalf of the Debtors. If called to testify, I could and would competently testify to the facts set forth herein.

### **BACKGROUND**

#### **I. The Bidding Procedures**

4. On August 9, 2023, the Debtors filed their *Motion for Entry of Order (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Provide Stalking Horse Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving the Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 58] (the "Bidding Procedures Motion")<sup>1</sup> with the United States Bankruptcy Court for the Northern District of Iowa (the "Court").

5. The Bidding Procedures Motion named the University as the Debtors' Stalking Horse Bidder, with an initial proposed purchase price of \$20 million (the "Stalking Horse Bid")

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion, Bidding Procedures Order, or 9019 Motion, as applicable and each as defined herein.

plus certain assumed liabilities as set forth therein, and set forth proposed procedures for the Debtors' proposed bidding and auction process. On September 14, 2023, the Court entered the order approving the relief requested in the Bidding Procedures Motion [Docket No. 222] (the "Bidding Procedures Order").

## **II. The Submission of Bids**

6. Pursuant to the timelines outlined in the Bidding Procedures Order, the Debtors received one other bid prior to the Bid Deadline, which was submitted by Preston Hollow Community Capital, Inc., as Bondholder Representative, and Computershare Trust Company, N.A., as Master Trustee (together, the "Bondholder Representatives"). The Bondholder Representatives' initial bid contemplated a purchase price consisting of (a) \$27,000,000 to be satisfied in the form of a credit bid and (b) cash consideration in the amount of \$800,000 to satisfy the Break-Up Fee payable to the University (together, the "Bondholder Bid"). As part of that initial bid, the Bondholder Representative indicated that they intended to designate American Health Systems ("AHS") as the operator. The initial Bondholder Bid did not contain an agreement between the Bondholder Representatives and AHS.

## **III. The Debtors' Auction Process**

7. Pursuant to the Bidding Procedures Order, the Debtors commenced an in-person auction at the offices of Debtors' counsel in Chicago, Illinois on October 4, 2023, which was subsequently continued to October 10, 2023 via Zoom and reopened on October 27, 2023 via Zoom. I personally attended each of the auction sessions. In addition, each of these auction sessions were attended by representatives of the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), the Bondholder Representatives as a bidding party, and the University as a bidding party.

**A. October 4, 2023 Auction<sup>2</sup>**

8. A critical discussion point at the commencement of the auction was the timing of any proposed closing date. Because the University had begun numerous workstreams relating to transition and potential closing issues, the University had the ability to close the transaction as soon as November 30, 2023. In contrast, if the Bondholder Representatives were to be selected as the winning bidder, it was likely that their transaction would not be in a position to close until, at a minimum, several months thereafter. This was critical because, on average, the Debtors' operational burn is approximately \$1 million per week, and because the Debtors' liquidity would run out prior to the end of November 2023. Therefore, in order to properly assess and compare the bids between the University and the Bondholder Representatives, it was crucial to get both parties to agree to fund any operating losses between November 30, 2023 and any potential closing.

9. To this end, as part of the Debtors' initial auction on October 4, 2023, the University modified the Stalking Horse Bid to reflect that "[i]f the University fails to close the transaction on or before November 30, 2023, despite the fact that all closing conditions have been satisfied, the University will absorb and assume the actual operating losses of the Debtors until such time as the University closes, including any shutdown costs, if applicable." Ex. A at 12:7–14. Based upon this modification to the University's bid, the Debtors and the Committee pushed the Bondholder Representatives during the October 4, 2023 auction to include a similar funding mechanism in the Bondholder Bid. Later that day, the Bondholder Representatives modified their bid "to include a commitment on the part of the [Bondholder Representatives] to cover the operating expenses for the hospital beginning on December 1 to the extent that the [Bondholder Representatives] are designated and selected as the winning bidder . . ." Ex. A at 10:5–11 (emphasis added).

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<sup>2</sup> A copy of the transcript of the October 4, 2023 auction is attached hereto as **Exhibit A**.

10. On the evening of October 4, 2023, the Debtors continued the auction in order to, among other things, (i) address potential modifications in the bids relating to certain parcels of real property, (ii) further assess the role of AHS in the Bondholder Representatives' bid; and (iii) continue negotiations among the bidding parties. At the end of the auction on October 4, 2023, the University's bid remained at \$20 million plus additional assumed liabilities, with a commitment to fund operating losses after November 30, whereas the Bondholder Representatives bid was, in addition to payment of the Break-Up Fee, a credit bid of \$27 million plus additional assumed liabilities, plus a commitment to fund up to \$750,000 in operating losses between November 15 and November 30, and an uncapped commitment to fund operating losses after November 30 until closing.

**B. October 10, 2023 Auction<sup>3</sup>**

11. At the resumed auction on October 10, 2023, after several rounds of bidding, the University submitted a modified topping bid of \$28 million in cash (after having modified their bid to remove certain unencumbered real property), plus the operating loss commitment for funding operating losses after November 30 until closing, as well as an agreement to invest an additional \$25 million over a five-year period at Mercy Hospital.

12. Similarly, at the resumed auction on October 10, 2023, the Bondholder Representatives modified the Bondholder Bid to include (i) \$27.8 million in credit bid; (ii) agreement to fund up to \$1.2 million for operating losses incurred between November 15-November 30, 2023 in exchange for clinics that are not part of the Bondholder Representatives' collateral; (iii) payment of the \$800,000 Break-Up Fee to the University; and (iv) agreement to fund uncapped operating losses incurred after November 30 until closing. As was the case with

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<sup>3</sup> A copy of the transcript of the October 10, 2023 auction is attached hereto as **Exhibit B**.

the initial Bondholder Bid, the Bondholder Representatives committed to engage an interim manager designee to assume operational control over the Hospital as of November 15, 2023.

13. At the conclusion of the auction on October 10, 2023, the Debtors determined, in consultation with the Committee, that the final bid from the Bondholder Representatives was determined to be the highest or otherwise best bid, subject to documentation reasonably acceptable to the parties. In addition, the Debtors designated the University's final bid as the Back-Up Bidder, pursuant to the requirements of the Bidding Procedures.<sup>4</sup> As described further below, the Debtors relied on the Bondholder Representatives' operating loss commitment in selecting the bid from the Bondholder Representatives, as it was intended to allow the Debtors' estate to be net neutral between the two bids given the differences between the parties' proposed closing dates.

14. On October 10, 2023, the Debtors filed the *Notice of Auction Results* [Docket No. 352], which disclosed that the Debtors selected the final bid from the Bondholder Representatives as the highest and best bid.

### **C. Definitive Documentation and Material Disagreement**

15. Immediately following the conclusion of the auction, the Debtors engaged in numerous discussions and negotiations with the Bondholder Representatives and AHS regarding (i) an amended asset purchase agreement, (ii) an interim management agreement providing for AHS to take over interim management of the Debtors as of November 15, 2023, and (iii) a funding agreement to provide for funding of operating losses consistent with the Bondholder Representatives' bid. During these negotiations, the Bondholder Representatives took the position—to the surprise of the Debtors and the Committee—that the funding commitments for operating losses incurred after November 30 would be subject to first using all of the Debtors'

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<sup>4</sup> The University disagreed with this designation and reserved rights with respect to this issue.

cash on hand and funds available from Mercy Hospital Foundation (the “Foundation”), an amount that could approach, or potentially exceed, \$10 million.

16. Critically, both the University’s and Bondholder Representatives’ bids to cover operating losses were made on the record prior to the filing of the *Debtors’ (I) Motion for Entry of Order Approving Settlement by and Among the Debtors, the Bondholder Representatives, the Committee, and Mercy Foundation; and (II) Application of Mercy, as Sole Member of Mercy Foundation for Section 540A.106 Ruling* [Docket No. 346] (the “Foundation Settlement”), which was filed on October 9, 2023. Because the motion seeking approval of the Foundation Settlement had not been filed when both bidders added the operating loss commitment to their respective bids on October 4, 2023, it was clear that the Foundation Settlement and proposed use of the Foundation funds was not a factor in the University’s modified bid to absorb and assume the Debtors’ operating losses following November 30, 2023.

17. The operating loss commitment was a crucial term that the Debtors (in consultation with the Committee) weighed in evaluating the bids submitted by the Bondholder Representatives. In the absence of an operating loss commitment—that is, a commitment to backstop the Debtors’ operating losses without requiring the Debtors to obtain liquidity from assets beyond its operations—the Debtors and the Committee firmly believed that the last bid submitted by the Bondholder Representatives (based on the Bondholder Representatives’ mistaken interpretation) was **materially lower** than the last bid by the University, which would mean that the Debtors would be forced to deplete all of the remaining cash and foundation funds before the closing of the sale transaction, which was not required by the University as part of its bid. In addition to this critical issue, the Debtors were unable to reach final agreement on the funding agreement, the interim management agreement, and to the Debtors’ knowledge, the Bondholder Representatives

had not reached agreement with AHS on a definitive agreement to allow AHS to operate the hospital.

18. During this period, the Debtors re-engaged in discussions and negotiations with the University to determine whether they were willing and able to recommit to the transaction in light of the fact that the Debtors believed that—based upon the developments occurring after October 10, 2023—that the University’s bid was the only viable transaction available to the Debtors.

**D. Auction Reopening**

19. In light of this material disagreement, and because the hearing on the Debtors’ proposed sale had been continued and no sale order had been entered, the Debtors determined, after consultation with the Committee, that (a) the last bid from the Bondholder Representatives (previously designated as the Winning Bid) was not higher or otherwise better than the last bid submitted by the University, and, therefore (b) it was appropriate and consistent with the Bidding Procedures Order and the Debtors’ fiduciary duties to reopen the auction.

20. On the record at the October 27, 2023 auction,<sup>5</sup> the University stated, “[c]onsistent with its commitment to maintaining sustainable access to care and healthcare workforce, and in light of the current impasse among the parties to this bankruptcy court proceeding, the State University of Iowa is willing to intercede to preserve the legacy of Mercy Iowa City.” Ex. C at 14:22:15:3.

21. To that end, the University confirmed that the University’s bid “would not include any Foundation money whatsoever,” nor would it deplete the Debtors’ cash on hand. Ex. C at 13:4-5, 13:9-10. Based on those clarifications, the Debtors determined that “the last bid submitted by the Bondholder Representatives [was] no longer the highest or otherwise best bid.” *Id.* at 13:15-

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<sup>5</sup> A copy of the transcript of the October 27, 2023 auction is attached hereto as **Exhibit C**.



18. Instead, the Debtors determined that (a) the last bid submitted by the University on the record on October 10, 2023 was the highest or otherwise best bid, and the last bid submitted by the Bondholder Representatives was “no longer the successful bid or the winning bid.” *See id.* at 13:19-25, 14:1-2.

22. It is my understanding that the University subsequently restated its bid on the record at the October 27, 2023 auction, which consisted of (a) \$28 million *plus* (b) an amount equal to the Debtors’ actual operating losses exclusive of professional fees and all other costs and expenses relating to the bankruptcy that are not already otherwise covered by the Debtors’ cash and other investments for the period commencing on December 1, 2023, and continuing until such time as the transaction closes *plus* (c) a commitment to invest at least \$25 million within five years of the transaction closing on information technology and physical plant infrastructure at the Hospital. *See id.* at 15:16-24; 16:4-12. Upon request by the Debtors, I understand that the University also confirmed on the record that “[t]o the extent that actual operating disbursements are greater than actual operating receipts, then the University agrees to fund the difference post-December 1st without regard to the Debtors’ Foundation funds or the Debtors’ cash on hand as of . . . December 1st.” *Id.* at 17:8-14; 17:21-24.

23. With these clarifications and statements made on the record, the Debtors determined, in consultation with the Committee, that the University’s bid was the “highest or otherwise best bid” at the conclusion of the October 27, 2023 auction. *See id.* at 18:1-3. In addition, the Debtors determined that any bid that required the use of the Debtors’ remaining cash and the Foundation’s cash prior to closing was not a viable transaction under the circumstances, and under the broad discretion granted in the Bidding Procedures Order, the Debtors rejected the bid from the Bondholders Representatives as not being financially viable, and the Bondholder

Representatives confirmed that they were unwilling to move forward with their bid without use of all remaining cash on hand and Foundation funds. *See id.* at 20-22.

24. It is my understanding that the Debtors subsequently filed the *Amended Notice of Auction Results* [Docket No. 420] on October 27, 2023, and later that day, publicly announced that the University was the winning bidder.

**THE PROPOSED SALE IS IN THE BEST INTEREST OF THE DEBTORS**

25. Based on the foregoing auction results, I believe that the consummation of the proposed sale to the University represents the highest and best (and only viable) transaction available for the Debtors. I have been involved in numerous transition calls with the University, and I believe that the transaction with the University will allow the mission of the Hospital to continue to flourish, and provide the Debtors with the necessary financial resources to continue operating until the closing date.

26. In summary, based on my understanding of and participation in the negotiations between the various parties involved with the sale and auction process, I believe the terms of the University bid are fair, reasonable, and in the best interest of the Debtors. Thus, in my estimation, the proposed sale to the University represents the sound exercise of the Debtors' business judgment and should be authorized by this Court.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: Iowa City, Iowa  
November 4, 2023

/s/ Mark E. Toney  
Mark E. Toney  
Chief Restructuring Officer  
Mercy Hospital, Iowa City, Iowa

**EXHIBIT A**

**October 4, 2023 Auction Transcript**



October 4th, 2023

10:00 a.m. Central Daylight Time

REPORT OF AUCTION PROCEEDINGS, taken  
before GREG S. WEILAND, CSR, RMR, CRR, pursuant to  
the Federal Rules of Civil Procedure for the United  
States Bankruptcy Court, at Suite 4000, 444 West  
Lake Street, in the City of Chicago, Cook County,  
Illinois, commencing at 10:00 o'clock a.m. Central  
Daylight Time, on the 4th day of October, 2023.

1 PRESENT:

2  
3 ON BEHALF OF THE DEBTORS:

4 MCDERMOTT WILL & EMERY

5 BY: MS. FELICIA GERBER PERLMAN

6 444 West Lake Street

7 Chicago, Illinois 60606-0029

8 (312) 984-3680

9 Email: fperلمان@mwe.com

10 - and -

11 MCDERMOTT WILL & EMERY

12 BY: MR. DANIEL M. SIMON

13 1180 Peachtree Street, NE, Suite 3350

14 Atlanta, Georgia 30309

15 (404) 260-8535

16 Email: dmsimon@mwe.com

17 - and -

18 NYEMASTER GOODE, P.C.

19 BY: MR. ROY LEAF

20 625 First Street SE, Suite 400

21 Cedar Rapids, Iowa 52401

22 (319) 286-7000

23 Email: rleaf@nyemaster.com

1 PRESENT (CONTINUED) :

2  
3 COUNSEL FOR THE COMMITTEE:

4 SILLS CUMMIS & GROSS P.C.

5 BY: MR. ANDREW H. SHERMAN

6 One Riverfront Plaza

7 Newark, New Jersey 07102

8 (973) 643-6982

9 Email: asherman@sillscummis.com

10  
11 ON BEHALF OF COMPUTERSHARE TRUST COMPANY AND  
12 PRESTON HOLLOW CAPITAL:

13 MINTZ, LEVIN, COHN, FERRIS

14 BY: MR. NATHAN F. COCO

15 MS. MEGAN M. PREUSKER

16 919 Third Avenue

17 New York, New York 10022

18 (212) 692-6795

19 Email: nfcoco@mintz.com

20 mpreusker@mintz.com



1 PRESENT (CONTINUED) :

2  
3 ON BEHALF OF THE STATE UNIVERSITY OF IOWA:

4 POLSINELLI

5 BY: MR. DAVID E. GORDON

6 501 Commerce Street, Suite 1300

7 Nashville, Tennessee 37219

8 (404) 253-6005

9 Email: dgordon@polsinelli.com

10 - and -

11 POLSINELLI

12 BY: MR. LINAS J. GRIKIS

13 150 North Riverside Plaza, Suite 3000

14 Chicago, Illinois 60606

15 (312) 873-2946

16 Email: lgrikis@polsinelli.com

17 - and -

18 POLSINELLI

19 BY: MR. CULLIN B. HUGHES

20 900 West 48th Place, Suite 900

21 Kansas City, Missouri 64112

22 (816) 360-4121

23 Email: chughes@polsinelli.com

1 ALSO PRESENT:

2 MS. KARA BORODKIN, on behalf of the Debtors

3 MR. JIM PORTER, on behalf of the Debtors

4 MR. MARK TONEY, on behalf of the Debtors

5 DR. THOMAS CLANCY, on behalf of the Debtors

6 MR. JOSEPH CLAMON, University of Iowa

7 MR. CORBIN CONNELL, Computershare

8 MR. FAISAL GILL, AHS

9 MR. JOHN DINAN, PRESTON HOLLOW

10 MR. NARENDRA GANTI, FTI Consulting

11 MR. CLIFFORD A. ZUCKER, FTI Consulting

12 MR. C. RICHARD BAYMAN, H2C Securities Inc.

13 MR. ANDREW S. ORMAN, H2C Securities Inc.

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1 MS. PERLMAN: Before we start, on the  
2 record, I want to kind of just reiterate some  
3 of the rules of the auction from the bidding  
4 procedures to make sure that we're all on the  
5 same page, and then we will turn it over to  
6 each of the potentially bidding parties in the  
7 room for their statements on the record.

8 Obviously, this auction is being conducted  
9 in accordance with the bid procedures that have  
10 been approved in this case. Minimum bid  
11 increments are \$100,000.

12 Once qualified, there will be a statement  
13 on the record for each bidder to make regarding  
14 good-faith purchaser status as set forth in the  
15 bidding procedures, but we will come back to  
16 that once we have qualified bidders.

17 At this time, we are not putting any time  
18 frames in place with respect to subsequent bids  
19 and the duration of the auction, but be aware  
20 that we have the right to do so and may do that  
21 later in the afternoon depending on how the  
22 auction is proceeding.

23 If any party has objections at any point  
24 during the day to how the auction is being  
25 conducted, those objections must be stated on

1 the record, or legally they will be waived by  
2 each party.

3 And I'd like to ask each party right now  
4 to confirm their understanding of that.

5 MR. GORDON: On behalf of the State  
6 University of Iowa, we agree with that.

7 MR. COCO: On behalf of the master  
8 trustee, we agree to that.

9 MS. PERLMAN: Before we proceed, I would  
10 like each party to designate somebody who will  
11 be speaking on behalf of each party for the  
12 court reporter's benefit. I assume it's the  
13 two of you, but if you could just confirm that.

14 MR. GORDON: Sure. David Gordon with  
15 Polsinelli, and I'll be speaking on behalf of  
16 the State University of Iowa.

17 MR. COCO: Nathan Coco from Mintz Levin.  
18 I'll be speaking on behalf of Computershare as  
19 master trustee.

20 MS. PERLMAN: And then as we're beginning,  
21 we started the auction having received -- the  
22 process having received a bid from  
23 Preston Hollow. Or I don't know how you want  
24 the bidding --

25 MR. DINAN: Bondholders.

1 MS. PERLMAN: Bondholders. Thank you.

2 And I'd like to turn the floor over to  
3 you, Nathan, so to speak, to see if there are  
4 any further clarifications to your bid so we  
5 can then move forward to qualified bidders in  
6 this case.

7 MR. COCO: Sure. Nathan Coco from  
8 Mintz Levin on behalf of the master trustee and  
9 bondholders.

10 I'll just identify for the record for the  
11 sake of posterity that Corbin Connell, who is  
12 serving as the master trustee, is present.  
13 Corbin is with Computershare.

14 Also present is Preston Hollow, John Dinan  
15 from Preston Hollow, general counsel. And  
16 Preston Hollow is the majority bondholder and  
17 also the noteholder representative.

18 And we also have Faisal Gill from AHS, who  
19 is a partner who has been identified in  
20 Computershare's bid as part of this auction as  
21 the operator that Computershare selected to run  
22 the hospital post-closing.

23 Okay. In terms of our bid, it speaks for  
24 itself, but we have been asked to add some  
25 additional flourish. And it's our

1 understanding that, you know, the other  
2 qualified bidder will also be making a  
3 representation to this effect, perhaps.

4 But our bid is modified in such a way as  
5 to include a commitment on the part of the  
6 bondholders to cover the operating expenses for  
7 the hospital beginning on December 1st to the  
8 extent that Computershare and the bondholders  
9 are designated and selected as the winning  
10 bidder and that we are approved as the winning  
11 bidder by the bankruptcy court.

12 MS. PERLMAN: Thank you. With that, you  
13 guys are deemed a qualified bidder in the  
14 process.

15 Now, as we have two qualified bidders,  
16 before we turn the floor over to you, I would  
17 like to complete a statement for the record and  
18 ask each qualified bidder to please confirm  
19 their understanding of this.

20 The bid procedures provide that each  
21 qualified bidder participating in the auction  
22 will be required to confirm on the record at  
23 the auction that it has not engaged in any  
24 collusion within the meaning of 363(n) of the  
25 Bankruptcy Code with respect to any bid

1 submitted or not submitted in connection with  
2 the sale, and it reaffirms its certification  
3 that the qualified bid is a good-faith,  
4 bona fide offer and intends to consummate the  
5 proposed transaction if selected as the winning  
6 bidder or the backup bidder.

7 Would you please so confirm on behalf of  
8 Preston Hollow and the bondholders?

9 MR. COCO: I will confirm that. Agreed.

10 MS. PERLMAN: Thank you. And will you  
11 please confirm that on behalf of the  
12 University?

13 MR. GORDON: On behalf of the University,  
14 confirmed and agreed.

15 MS. PERLMAN: Thank you. Do you have any  
16 similar modification to your bid to make on the  
17 record on behalf of the University?

18 MR. GORDON: Sure. So the University, we  
19 stand on our \$20 million bid amount that's  
20 already been submitted.

21 However, the University is willing to  
22 enhance its bid in the following manner: If  
23 the University is chosen as the winning bidder,  
24 not the backup bidder, and subject to  
25 satisfaction of all closing conditions,

1 including regulatory approval, and subject to  
2 entering into an employee leaseback with the  
3 Debtors for the month of December 2023 that is  
4 acceptable to the University, the University  
5 commits to closing the transaction on or before  
6 November 30th, 2023.

7 If the University fails to close the  
8 transaction on or before November 30th, 2023,  
9 despite the fact that all closing conditions  
10 have been satisfied, the University will absorb  
11 and assume the actual operating losses of the  
12 Debtors until such time as the University  
13 closes, including any shutdown costs, if  
14 applicable.

15 The University does not commit to being a  
16 backup bidder.

17 MS. PERLMAN: Taking all the information  
18 stated on the record to date into account, and  
19 in consultation with the consultation party,  
20 and to confirm that the only consultation party  
21 at this point in time is the creditors'  
22 committee, the Debtors and the creditors'  
23 committee determine that the current highest or  
24 otherwise best bid is the bid of  
25 Preston Hollow.



1 And at this point, I'll turn to the  
2 University to see if you're ready to make a  
3 subsequent bid or would like to take a break at  
4 this time.

5 MR. GORDON: We'd like to take a short  
6 break at this time.

7 MS. PERLMAN: Thank you.

8 Off the record.

9 (Whereupon, a recess was taken  
10 from 1:06 p.m. to 6:37 p.m.)

11 MS. PERLMAN: We're going to go back on  
12 the record.

13 This is a continuation of the auction of  
14 Mercy Hospital.

15 The University has informed us that it  
16 will not be increasing its bid with respect to  
17 the full hospital but may be bidding with  
18 respect to individual clinics from the  
19 hospital.

20 Am I stating that correctly?

21 MR. GORDON: That's correct.

22 MS. PERLMAN: Thank you.

23 Preston Hollow is making -- it's our  
24 understanding that Preston Hollow is making a  
25 modification to its bid. Is that correct?

1 MR. COCO: That's correct. And so the  
2 modification is as follows: In addition to  
3 what we've already bid, Preston Hollow's  
4 proposal would be to take over operational  
5 control on November 15th, on or before  
6 November 15th, I guess November 15th let's say  
7 for precision, and that the bondholders,  
8 Computershare and Preston Hollow, would be  
9 responsible for operating losses at a capped  
10 amount of \$750,000 for that 15-day stub period  
11 before December 1st in exchange for the  
12 additional assets, which are all of the  
13 debtor's interest in their clinics, all of the  
14 clinics, leased and owned, and for the title to  
15 all of the parking properties.

16 The other thing that we want to put on the  
17 record is that this auction process with the  
18 sort of supplemental bid by the University of  
19 Iowa, after it chose not to give a topping bid,  
20 is peculiar, goes outside the scope of the bid  
21 procedures as approved by the court, and we  
22 reserve all objections to that.

23 MS. PERLMAN: Understood. The Debtors  
24 believe that it has the discretion in the bid  
25 procedures to accept bids for subsets of the

1 assets that will maximize value and ensure the  
2 ability for sales to close.

3 With that, given the hour and the fact  
4 that our consultation party, the creditors'  
5 committee, is unable to reach its members to  
6 discuss this bid, we are suspending the auction  
7 at this time. We will give notice of  
8 reconvening the auction prior to the sale  
9 hearing to parties and find a mutually  
10 convenient time for parties to continue and  
11 conclude the auction.

12 I do want to give an admonishment to all  
13 that this auction is a confidential proceeding  
14 and that nobody here should discuss any of the  
15 events of today publicly. We will make  
16 whatever notices we need to as to the extension  
17 of the auction, but the parties are not free to  
18 do so.

19 Does anybody else care to make any  
20 statements, or should we go off the record?

21 MR. SHERMAN: Just as far as on the  
22 addendum to the confidentiality, the statement  
23 could be that the action has been continued.

24 MS. PERLMAN: It's fair to say that we  
25 will be filing a notice of continuance, so it

1 will be public that the auction has been  
2 continued.

3 MR. GORDON: David Gordon of Polsinelli on  
4 behalf of the University. I just want to  
5 reserve all of our rights to continue to  
6 participate at the continued auction.

7 MS. PERLMAN: Any other statements for the  
8 record?

9 With that, we are included for the  
10 evening. Thank you, everybody, for coming, and  
11 we will follow up shortly with when the auction  
12 will be continued to.

13 (Whereupon, the proceeding was  
14 adjourned at 6:41 p.m.)  
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C E R T I F I C A T E

The within and foregoing auction was reported in shorthand by GREG S. WEILAND, CSR, RMR, CRR, within and for the County of Cook and State of Illinois, on the 4th day of October, 2023, at the hour of 10:00 a.m., at 444 West Lake Street, Suite 4000, in the City of Chicago, Cook County, Illinois.

The proceedings were taken down in shorthand by the undersigned, acting as stenographer; and the within and foregoing is a true, correct and complete record of all of the proceedings had at the time and place hereinabove referred to.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my signature on this 5th day of October, 2023.

  
\_\_\_\_\_  
GREG S. WEILAND, CSR, RMR, CRR  
License No. 084-003472

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**EXHIBIT B**

**October 10, 2023 Auction Transcript**

1  
2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF IOWA  
4 Case No. 23-00623 (TJC)

5 -----  
6 In re:

7 MERCY HOSPITAL, IOWA CITY, IOWA,  
8 et al.,

9 Debtors.  
10 -----

11 -----  
12 REPORT OF AUCTION PROCEEDINGS  
13 Via Zoom  
14 Tuesday, October 10th, 2023  
15 -----

16 CONFIDENTIAL

17 This transcript portion contains information subject to  
18 a Confidentiality Agreement and shall be used  
19 only in accordance therewith.  
20

21  
22  
23 REPORTED BY: Karen Friedlander, CCR-NJ, RCR-NY,  
24 RDR, CRR

25 JOB NO.: 23527

1 REPORT OF AUCTION PROCEEDINGS,  
2 taken before Karen Friedlander, CCR-NJ, RCR-NY,  
3 RDR, CRR, pursuant to the Federal Rules of Civil  
4 Procedure for the United States Bankruptcy  
5 Court, via Zoom, commencing at 10:00 o'clock  
6 a.m. Central Daylight Time, on the 10th day of  
7 October, 2023.



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17 ALSO PRESENT:

18 JOHN DINAN, Preston Hollow  
19 JIM PORTER, on behalf of the Debtors  
20 MARK TONEY, on behalf of the Debtors  
21 JOSEPH CLAMON, University of Iowa  
22 CORBIN CONNELL, Computershare  
23 FAISAL GILL, AHS  
24 NARENDRA GANTI, FTI Consulting  
25 CLIFFORD A. ZUCKER, FTI Consulting  
C. RICHARD BAYMAN, H2C Securities Inc.  
ANDREW S. ORMAN, H2C Securities Inc.

1 MS. PERLMAN: For the record,  
2 this is Felicia Gerber Perlman on behalf of  
3 Mercy Hospital, the debtors, and we are starting  
4 the continuation of the auction that began last  
5 Wednesday, October 4th, and took a break as we  
6 were discussing bids, when they were coming in,  
7 to give parties a time to evaluate and go back  
8 and parch the committee to talk with its  
9 constituents.

10 So with that, I'd like to reopen  
11 the auction by looking to Preston Hollow to see  
12 if they have any changes to the bid they made on  
13 the record with respect to the clinics and the  
14 parking, which my understanding was, and the  
15 record will stand for itself, but for the sake  
16 of clarity, starting the auction is 750,000 for  
17 all the clinics and all the parking.

18 So, Nathan, do you have any  
19 modifications or comments on that bid?

20 MR. COCO: Yeah, thank you,  
21 Felicia.

22 MR. DINAN: Excuse me. Excuse  
23 me, Nathan. I'm sorry.

24 Felicia, I just want for clarity,  
25 the \$750,000 bid was related to -- I want to

1 make sure we got this correct -- was related to  
2 all of the real estate, which included the  
3 clinics, the lots, the vacant lots, the parking  
4 lots, and included the old Cancer Center or  
5 what's referred to as MOB 2, which is  
6 unoccupied. That was the \$750,000 number.

7 I thought we revised that on the  
8 record that to the extent we were carving out  
9 and excluding the Medical Office Building Number  
10 2 or the old Cancer Center and the adjacent  
11 parking to that, that the bid was for 600,000 of  
12 covering additional operating losses, commencing  
13 on November 15th.

14 I just don't remember what the  
15 record reflected. But those were the two --  
16 those were the two variations.

17 MS. PERLMAN: I don't believe the  
18 600,000 was ever made on the record, so that's  
19 what I was looking for, indication from Nathan.

20 I believe, and we could check the  
21 record if it becomes relevant, which I don't  
22 think it will, that the 750 included all of the  
23 parking, including the parking related to the  
24 MOB, but not the building itself; that the  
25 statement on the record was the clinics and all

1 the parking versus the clinics and not including  
2 the parking at the MOB.

3 MR. DINAN: Correct.

4 MS. PERLMAN: But for now,  
5 Nathan, what is -- do you have an update to or  
6 clarification modification with respect to that  
7 bid?

8 MR. COCO: We do, we do, and it's  
9 consistent with precisely what Mr. Dinan just  
10 said, which is that as an alternative to our  
11 \$750,000 offer, we're prepared to make a  
12 \$600,000 offer using the same structured format.

13 It would be a \$600,000 offer that  
14 would be in the form of accepting interim  
15 operational control instead of on November 30th  
16 or December 1st, on November 15th, and assuming  
17 operating losses up to a capped amount of  
18 600,000 as consideration for all of Mercy's  
19 clinics and the parking -- the parking  
20 properties, but excluding the MOB 2 property and  
21 the adjacent parking lot to the MOB 2 property.

22 And so, you know, this was an  
23 evolution from our original bid, which was  
24 announced on the record last Wednesday, which  
25 was a \$27 million bid plus a commitment to take

1 operational control on an interim basis,  
2 beginning December 1st, and assuming  
3 responsibility for any operating losses that  
4 accrue, beginning on December 1st to the closing  
5 date.

6 JD, I'll just ask, is there any  
7 additional details or flourish that I missed?

8 MR. DINAN: No. That's correct.  
9 Thank you. You did it much more eloquently than  
10 I did.

11 MR. SHERMAN: This is Andrew  
12 Sherman for the Committee.

13 Just for clarification, Mr. Coco.  
14 You referred to parking. Can you clarify the  
15 parking. Is it the lots that are interconnected  
16 relating to the clinics, which is I think the  
17 way you -- I heard it, but I just want to, for  
18 clarity, if you could make that statement.

19 MR. COCO: Yeah, it's my  
20 understanding that they are not connected to the  
21 clinics, they are just separate parking lot  
22 properties.

23 MR. DINAN: They're the patchwork  
24 of, quote, parking lots and vacant lots.

25 So this is including everything

1 that was part of the original stalking horse bid  
2 that was -- I think was included in all of those  
3 assets.

4 So all of the parking lots, all  
5 of the vacant lots that were part of the  
6 stalking horse bid, with the exception of the  
7 MOB 2 and the adjacent parking to MOB 2.

8 MR. SHERMAN: And we refer to MOB  
9 2. That's the cancer center?

10 MR. DINAN: Correct.

11 MS. PERLMAN: Does the University  
12 have a counterresponse to that offer?

13 MR. GORDON: The University does.  
14 So David Gordon on behalf of the State  
15 University of Iowa.

16 The University does desire to bid  
17 for the clinics. But the University only wants  
18 the clinics if they come with a hospital.

19 And so University is prepared to  
20 bid \$27.1 million for the clinics, the hospital,  
21 everything that was included in the original  
22 stalking horse asset purchase agreement.

23 You know, since the auction on  
24 Wednesday, the University has had significant  
25 time to reflect and have discussions with

1 leadership, and in light of what the University  
2 views to be the risk to the community and the  
3 State of Iowa, based on the University's  
4 concerns about the competing bidder's ability  
5 and continuing to operate Mercy as a general  
6 acute-care hospital in a viable manner, the  
7 University of Iowa is willing to enhance its bid  
8 to bid \$27.1 million for all of the assets that  
9 were in the original stalking horse asset  
10 purchase agreement. And just some points of  
11 clarification on that.

12 So if the University is chosen as  
13 the winning bidder and not the backup bidder and  
14 subject to the acquisition being timely approved  
15 by the bankruptcy cohort, satisfaction of all  
16 closing conditions of the APA, including  
17 licensure and entering into an employee  
18 leaseback with the debtors for the month of  
19 December, if applicable, the University commits  
20 to closing the transaction on or before  
21 November 30th, 2023.

22 If the University fails to close  
23 on or before November 30th, 2023, despite the  
24 fact that the closing conditions have been met,  
25 the University will absorb the actual operating



1 losses of the debtors until the University can  
2 close, and the University, in addition to  
3 bidding the \$27.1 million, if the University is  
4 chosen as the winning bidder, not the backup  
5 bidder, the University commits to invest at  
6 least \$25 million on information technology,  
7 infrastructure, physical plant infrastructure,  
8 including but not limited to the roof, the  
9 parking facilities and plan equipment and  
10 medical equipment for the hospital, and the  
11 University will commit to investing these \$25  
12 million within five years of closing.

13 And just for clarification and  
14 being consistent with our prior bid, the  
15 University is not willing to serve as a backup  
16 bidder.

17 MS. PERLMAN: Unless anyone has  
18 comments to make on the record right at this  
19 time, we are going to take a break and send  
20 folks to virtual rooms and then we'll resume.

21 MR. COCO: Felicia, we do have a  
22 comment to make on the record, which is that all  
23 of this is completely improper; flies in the  
24 face of the expressed conditions and terms of  
25 the bid procedures.

1 The University of Iowa was  
2 disqualified from participating in the auction  
3 following its failure to make it a topping bid  
4 last Wednesday at the auction. Article 9,  
5 Section (b)(4) of the bid procedures makes  
6 clear, it's express, that if any bidder does not  
7 participate in a round of overbids, it is deemed  
8 disqualified for all purposes in the auction.

9 And even the University of Iowa's  
10 nonconforming bid for just two of the clinics,  
11 which, by the way, was never put on the record,  
12 also was a nonconforming bid, although the bid  
13 procedures do contemplate that a bidder may bid  
14 for less than all of the assets, that may only  
15 be done in connection with an overbid, once  
16 again, based upon the express terms of the bid  
17 procedures.

18 And so we were declared the  
19 highest bidder on Wednesday. There was no  
20 competing bid after a full day of awaiting. The  
21 University of Iowa confirmed on the record that  
22 it was not making an overbid on Wednesday. At  
23 that point, based on the bid procedures, it was  
24 deemed disqualified and is disqualified for all  
25 purposes.

1 And so this bid is nonconforming,  
2 it's inappropriate, it's improper, it flies in  
3 the face of bid procedures and cannot and should  
4 not be considered by anybody and does not  
5 require a response from the -- from  
6 Computershare or Preston Hollow.

7 MR. GORDON: So David Gordon --

8 MS. PERLMAN: Go ahead.

9 MR. GORDON: -- on behalf of the  
10 University, just to respond to that.

11 You know, the University did  
12 reserve the right to continue bidding at the  
13 continued auction. The auction was not  
14 concluded. The goal of an auction is to maximum  
15 value.

16 The debtors have broad discretion  
17 to conduct the auction in a manor that maximizes  
18 value and that is for the best of the debtors,  
19 the estate, and the charitable mission of the  
20 hospital.

21 And so that's the University's  
22 position.

23 MS. PERLMAN: We're going to  
24 break into separate rooms and then we will  
25 regroup shortly.

1 Dan, if you can figure out each  
2 of the four groups, that would be great.

3 (Discussion off the record.)

4 MS. PERLMAN: We should be off,  
5 unless, JD, were you going on the record or off  
6 the record?

7 MR. DINAN: Doesn't matter. I  
8 was just going to ask, you said, you know, we'll  
9 reconvene shortly. We're going to need some  
10 time to, obviously, discuss this, and so, do we  
11 just --

12 MS. PERLMAN: You'll be in your  
13 own breakout room where it's just you guys. We  
14 will probably come join you at some point, but I  
15 think the way it works is we send a ping, kind  
16 of like a knock on the door, asking --

17 MR. DINAN: Okay.

18 MS. PERLMAN: -- to come join  
19 you. So you'll be able to discuss in there.

20 MR. DINAN: Okay.

21 MS. PERLMAN: If you prefer to do  
22 your own link, you can. But if this works, it  
23 should be the same --

24 MR. DINAN: Okay.

25 MS. PERLMAN: -- as if you went

1 back to your conference room.

2 But I do believe that we will be  
3 joining -- coming over to your room to visit  
4 shortly.

5 MR. DINAN: Okay.

6 (Off the record at 10:17 a.m.  
7 Central Time.)

8 (On the record at 12:17 p.m.  
9 Central Time.)

10 MS. PERLMAN: So we are back on  
11 the record. After conversation and consultation  
12 with the UCC, our consultation party, the  
13 debtors determined that at the -- as we  
14 concluded the last round of bidding, the bid of  
15 Preston Hollow was higher than the bid of the  
16 University, who had bid \$27.1 million.

17 We would like to turn it back  
18 over to the University to see whether they are  
19 interested in modifying or increasing their bid.

20 MR. GORDON: Yes, the University  
21 is interested in modifying its bid in the  
22 following ways: Everything that was in our  
23 prior bid, including the \$25 million and future  
24 capital commitments, with two modifications:  
25 Number 1, we will exclude MOB 2, the Cancer

1 Center, so it's apples to apples, comparing the  
2 bondholder bid to our bid.

3 And Number 2, we will raise our  
4 bid to \$28 million.

5 MS. PERLMAN: And to clarify,  
6 when you say you're excluding the Cancer Center,  
7 it's the Cancer Center and the parking lot that  
8 is adjacent to the Cancer Center?

9 MR. GORDON: Yes, that's correct.

10 MS. PERLMAN: So now the parties  
11 are on the same universe of assets.

12 MR. GORDON: Correct.

13 MR. DINAN: One additional  
14 question of clarification, David.

15 Does that bid come with an  
16 agreement with the debtor regarding providing a  
17 perpetual unrestricted access easement to the  
18 MOB 2?

19 MR. GORDON: We have not  
20 discussed that.

21 MS. PERLMAN: And to clarify with  
22 either party, the debtor needs an easement for  
23 MOB 2, and that will be consistent between the  
24 two parties.

25 MR. GORDON: We're happy to

1 consider that. I didn't have a chance to  
2 discuss that with my client, but I don't see  
3 that as being something that would be  
4 problematic.

5 MS. PERLMAN: With that, unless  
6 Preston Hollow has additional questions, I  
7 assume that you need time to go back and have  
8 further conversations.

9 MR. COCO: We do. But before we  
10 do, and while we're still on the record, it will  
11 surprise no one in the Zoom room to hear that we  
12 reserve objections, including the objections  
13 raised on the record during the prior session.

14 But thank you.

15 MS. PERLMAN: Thank you.

16 Dan, can you again send us all  
17 back to our corners.

18 (Off the record, 12:20 p.m.  
19 Central Time.)

20 (Off the record, 12:58 p.m.  
21 Central Time.)

22 MS. PERLMAN: On the record  
23 before the break, the University increased their  
24 bid to \$28 million and removed the Cancer Center  
25 and adjacent parking lot from their bid so that

1 it is apples-to-apples bids on the same group of  
2 assets between the two parties at this point in  
3 time.

4 The debtors determined -- they  
5 also confirmed that they would be willing to  
6 give an easement on the -- for the entryway to  
7 the Cancer Center.

8 We determined that their bid at  
9 that time was the highest and best bid, and at  
10 this point in time, turn it back over to Preston  
11 Hollow to see if they have an additional bid to  
12 make on the record.

13 MR. COCO: Yes. Thanks, Felicia.  
14 The bondholder's group Computershare, Preston  
15 Hollow do wish to modified their bid thusly,  
16 increase the aggregate amount of their bid to 29  
17 million.

18 There are two components to that  
19 bid. 27.8 million of the 29 is the credit bid  
20 portion. The cash portion is 1.2 million, which  
21 is the value of the ancillary real properties,  
22 excluding the Cancer Center, MOB 2, and the  
23 adjacent parking lot, and the 1.2 million  
24 consists of what our prior bids would be  
25 contributed in the form of covering operating



1 losses upon our assumption of management on an  
2 interim management basis beginning on  
3 November 15th.

4 MS. PERLMAN: I would ask you to  
5 clarify two things, please, that that bid, in  
6 addition to that, is the payment of the breakup  
7 fee if you were the successful bidder.

8 MR. COCO: That is correct.

9 MS. PERLMAN: Great, thank you.  
10 And also would like you to clarify on the record  
11 that you would agree to give an easement with  
12 respect to the entryway to the building, similar  
13 to the University's bid.

14 MR. DINAN: Felicia, I'll address  
15 that. First of all, I did not hear the  
16 University make that stipulation on the record.  
17 The prior time I heard that they would consider  
18 it, but that they needed approval.

19 So we did -- we will also  
20 consider it, but maybe Dave wants to clarify  
21 that now --

22 MR. GORDON: Sure.

23 MR. DINAN: -- and then we can  
24 consider it.

25 MR. GORDON: Yeah, we are willing

1 to offer the easement. So we will modify our  
2 prior bid by committing to provide the easement  
3 as requested.

4 MR. DINAN: So are we in a  
5 position where we can break out again and the  
6 University has to address this? I also believe  
7 that we, too, will not have a problem with that,  
8 but I just -- I need to confirm that with my  
9 group.

10 MS. PERLMAN: Yeah, let's take a  
11 break for you to confirm that with your group  
12 and then you can come back on the record right  
13 after that.

14 So, Nathan, if you would text me  
15 as soon as you have that confirmed and we can  
16 come back on the record, because, obviously,  
17 that impacts valuation of your bid.

18 MR. DINAN: Okay. This won't  
19 take very long. We should be back in five  
20 minutes.

21 MS. PERLMAN: Sounds good.

22 MR. COCO: In fact, if you could  
23 put us back in our room, yeah, that would be  
24 great.

25 MS. PERLMAN: Yes.

1 MR. COCO: Thank you.

2 (Off the record at 1:01 p.m.

3 Central Time.)

4 (On the record at 1:06 p.m.

5 Central Time.)

6 MS. PERLMAN: So to pick up where  
7 we left off, I'd like to ask Preston Hollow to  
8 confirm on the record that their bid includes an  
9 easement with respect to the entryway to the  
10 cancer center.

11 MR. COCO: We confirm.

12 MS. PERLMAN: Thank you.

13 So turn to the University. Do  
14 you need additional time now or are you ready to  
15 move forward?

16 MR. GORDON: We're ready to move  
17 forward.

18 MS. PERLMAN: Okay.

19 MR. GORDON: So is the highest  
20 bid now with the bondholder representatives?

21 MS. PERLMAN: Yes. So the  
22 highest bid at this point is with the bondholder  
23 representatives.

24 MR. GORDON: Okay. We are not  
25 going to further bid.

1                   You know, the purpose of the  
2                   University's participation in this process was  
3                   to ensure access to health care and to jobs.  
4                   That's why we bid, that's why we served as the  
5                   stalking horse, and at this point, we're, you  
6                   know, we're not going to bid any further.

7                   We look forward to working  
8                   collaboratively with the future operators of  
9                   Mercy Iowa City, wish the best of luck to  
10                  Preston Hollow, the bondholder representatives,  
11                  and the American Health Care Systems.

12                 MS. PERLMAN: Thank you very  
13                 much. We appreciate your support throughout  
14                 this process, as well as the support of Preston  
15                 Hollow, and --

16                 MR. SHERMAN: Felicia, from the  
17                 Creditor's Committee's standpoint, David, we  
18                 appreciate that, but Felicia, would you  
19                 designate the University as a backup bidder?

20                 MS. PERLMAN: Yes. From  
21                 participating in the auction, pursuant to the  
22                 terms of the bid procedures, we believe -- thank  
23                 you, Andrew -- that the University is a backup  
24                 bidder to Preston Hollow.

25                 We believe that Preston Hollow

1 has, you know, all the wherewithal and intention  
2 of closing.

3 So we assume that we are moving  
4 forward with them towards closing, but wanted to  
5 so designate in accordance with the bid  
6 procedures.

7 And with that, the debtors in  
8 consultation with the consultation party, which  
9 is the UCC, determine that the highest and  
10 otherwise best bid is the bid of Preston Hollow,  
11 with a credit bid of 27.8 million, plus a  
12 \$1.2 million reimbursement for operating losses  
13 for the hospital, the clinics, and the parking  
14 lots that go along with those clinics, excluding  
15 the Cancer Center and the adjacent parking lot  
16 to the Cancer Center, and allowing for an  
17 easement into the Cancer Center and covering, in  
18 addition to that, the breakup fee, all subject  
19 to documentation reasonably acceptable to the  
20 parties.

21 Does anybody else have anything  
22 that they want to put on the record before we  
23 conclude the auction?

24 MR. GORDON: I do. David Gordon,  
25 on behalf of the University.

1 At the prior auction it was  
2 discussed that the University as stalking horse  
3 did not need to serve as backup bidder. I  
4 believe that was on the record at one point  
5 during the auction at this point.

6 That continues to be our  
7 position. We reserve all rights with respect to  
8 the backup bidder issue.

9 MS. PERLMAN: Understood.

10 Anybody else have anything they  
11 want to say on the record? If not, we  
12 appreciate everybody's participation in the  
13 process and support for Mercy Hospital and its  
14 continued operations, and we look forward to  
15 moving forward with Preston Hollow and AHS and  
16 to continue provision of care through the  
17 hospital in Iowa City going forward.

18 So thank you all, and we will be  
19 working to reschedule the sale hearing and give  
20 notice to all.

21 MR. DINAN: Felicia, when you go  
22 off the record, can I ask a couple questions?

23 MS. PERLMAN: Yes. We can go off  
24 the record.

25 (1:10 p.m. Central Time.)

CERTIFICATE

I, Karen Friedlander, a  
Certified Court Reporter of the State of New  
Jersey, do hereby certify that the foregoing is  
a true and accurate computer-aided transcript of  
the proceedings as taken stenographically by and  
before me at the time, place and on the date  
hereinbefore set forth.

I do further certify that I am  
neither of counsel nor attorney for any party in  
this action that I am not interested in the  
event nor outcome of this litigation.

*Karen Friedlander*

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Dated: 10-10-23

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\$25 (3)

\$27 (I)

\$27.1 (4)

\$28 (2)

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\$750,000 (3)

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07102 (I)

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1 (I)

1.2 (2)

1:01 (I)

1:06 (I)

1:10 (I)

10:00 (I)

10:17 (I)

10022 (I)

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10th (2)

115 (I)

1180 (I)

12:17 (I)

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1200 (I)

1300 (I)

150 (I)

15th (3)

1600 (I)

1st (3)

< 2 >

2 (I2)

2023 (4)

212 (I)

23-00623 (I)

23527 (I)

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29 (2)

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37219 (I)

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64112 (I)

643-6982 (I)

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750 (I)

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<b>chosen</b> (2)	<b>confirmed</b> (3)	<b>declared</b> (1)	<b>extent</b> (1)
<b>Chughes@polsinelli.co</b>	<b>connected</b> (1)	<b>deemed</b> (2)	
<b>m</b> (1)	<b>connection</b> (1)	<b>Des</b> (1)	< F >
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**EXHIBIT C**

**October 27, 2023 Auction Transcript**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF IOWA  
3  
4

5 IN RE:

6 MERCY HOSPITAL, IOWA CITY Case No. 23-00623 (TJC)  
7 IOWA, et al. Jointly Administered  
8 Debtors.  
9

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10  
11  
12 REPORT OF AUCTION PROCEEDINGS

13 Via Zoom

14 Friday, October 27, 2023

15 10:09 a.m. Eastern Standard Time  
16

17 CONFIDENTIAL

18 This transcript portion contains information subject to  
19 a Confidentiality Agreement and shall be used  
20 Only in accordance therewith.  
21  
22

23 Reported by: Renee J. Ogden, CSR-3455, RPR.

24 Job No.: 23979  
25

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20 As bondholder representative



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19  
20 ALSO PRESENT:

21 JOHN DINAN - Preston Hollow

22 JIM PORTER - on behalf of the Debtors

23 MARK TONEY - on behalf of the Debtors

24 CORBIN CONNELL - Computershare

25 NARENDRA GANTI - FTI Consulting

1 CLIFFORD A. ZUCKER - FTI Consulting  
2 C. RICHARD BAYMAN - H2C Securities Inc.  
3 ANDREW S. ORMAN - H2C Securities Inc.  
4 TOM CLANCY - Mercy, Iowa City  
5 ASHLEY CHAMPION-POLSINELLI - State University of Iowa  
6 JACK HAAKE - Debtors  
7 JACOB PARK - Mercy, Iowa City

1 Friday, October 27, 2023

2 10:09 a.m. Eastern Standard Time

3  
4 ATTORNEY SIMON: Good morning, everyone.

5 This is the reopened auction in the  
6 Mercy Hospital, Iowa City matter, case number  
7 23-00623 currently pending in the United States  
8 Bankruptcy Court for the Northern District of Iowa.

9 My name is Dan Simon from McDermott Will  
10 & Emery, counsel for the Debtors.

11 We're joined today by my partner,  
12 Felicia Perlman; the Debtors' chief executive  
13 officer, Tom Clancy; the Debtors' chief  
14 restructuring officer, Mark Toney; and the Debtors'  
15 chief financial officer, Jim Porter.

16 We also have the two bidding parties on  
17 the line.

18 The first is the group known as the  
19 Bondholder Representatives from Preston Hollow  
20 Community Capital and Computershare.

21 And the second is the University of  
22 Iowa.

23 We're also joined by the Official  
24 Committee of Unsecured Creditors who acts as the  
25 sole consultation party under the bidding

1 procedures.

2 I'm going to ask that each party have  
3 only one speaker designated to speak so that we  
4 keep the transcript streamlined.

5 Nathan Coco, is it safe to assume that  
6 you are the speaker for the Bondholder  
7 Representative?

8 ATTORNEY COCO: That is correct.

9 ATTORNEY SIMON: Dave Gordon, is it safe  
10 to assume that you are the speaker for the  
11 University of Iowa?

12 ATTORNEY GORDON: Yes, that's correct.  
13 David Gordon on behalf of the State University of  
14 Iowa.

15 ATTORNEY SIMON: Andrew Sherman, is it  
16 fair to assume that you are the speaker for the  
17 committee?

18 ATTORNEY SHERMAN: It is a fair  
19 statement, Mr. Simon.

20 ATTORNEY SIMON: Thank you.

21 As you know, this auction is being  
22 conducted pursuant to the bidding procedures order  
23 which was entered by the bankruptcy court on  
24 September 14th, and filed at Docket 222.

25 The Debtor commenced the auction

1 pursuant to those bidding procedures on  
2 October 4th. We were all in person at McDermott's  
3 offices in Chicago. The auction was continued  
4 later that evening and resumed via Zoom on  
5 October 10th.

6 At the conclusion of the auction on  
7 October 10th, the Debtors, after consultation with  
8 the committee, determined that the highest or  
9 otherwise best bid was the final bid submitted by  
10 the Bondholder Representative.

11 That bid, as stated on the record, was a  
12 credit bid in the amount of \$27.8 million, an  
13 agreement to fund up to \$1.2 million in operating  
14 losses from November 15th to November 30th, and  
15 payment in cash of the \$800,000 breakup fee to the  
16 University of Iowa.

17 That bid also included an obligation to  
18 begin funding the operating losses of the Debtors  
19 in full from December 1st until the closing of the  
20 sale.

21 In the days that followed the conclusion  
22 of that auction, a material disagreement emerged.  
23 The Bondholder Representative took the position  
24 that the obligation to fund operating losses of the  
25 Debtors would be offset by all available sources of

1 funds, which would include the Debtors' cash as  
2 well as Foundation cash contemplated to be paid  
3 under a settlement agreement which remains subject  
4 to court approval.

5 The practical reality of that  
6 disagreement meant that the Debtors' cash and  
7 Foundation cash would be depleted prior to any  
8 funding obligation was required by the Bondholder  
9 Representative and prior to any closing.

10 The Bondholder Representative last  
11 Thursday filed a motion to compel compliance with  
12 the bidding procedures.

13 The Debtors dispute many of the  
14 allegations in that pleading and reserve all  
15 rights.

16 Needless to say, this disagreement  
17 necessarily meant that the value of the final bid  
18 from Preston Hollow was materially different than  
19 what the Debtors and the Committee determined at  
20 the auction.

21 Given that the sale hearing had been  
22 continued and no sale order was entered, and that  
23 the Debtors could not reach agreement with the  
24 Bondholder Representative, the Debtors determined  
25 after consultation with the Committee that it was

1 appropriate and consist with the bidding procedures  
2 and their fiduciary duties to reopen the auction  
3 this morning.

4 The various parties on the phone today  
5 were notified via email this past Wednesday.

6 So with those introductory comments, I  
7 want to seek one simple clarification from the  
8 University of Iowa first.

9 The last bid described by the  
10 University of Iowa on the record on October 10th  
11 contained an obligation to fund operating losses of  
12 the Debtors on and after December 1st, 2023 until a  
13 closing occurred.

14 The Debtors understood that the funding  
15 of operating losses would be calculated as the  
16 difference between operating expenses and operating  
17 revenues. In other words, this calculation would  
18 be without regard to Debtors' existing cash or  
19 Foundation cash.

20 Was the University's last bid on the  
21 record consistent with the Debtors' understanding  
22 as I just described?

23 ATTORNEY GORDON: The University's last  
24 bid on the record did not include any Foundation  
25 money.

1 With respect to cash, I do believe we  
2 assumed that the Debtors would use their cash on  
3 hand to fund their operations and that we would  
4 make up the difference between operating revenues  
5 and losses.

6 ATTORNEY SIMON: Okay. So it would be  
7 the difference between the operating expenses and  
8 the operating revenues?

9 ATTORNEY GORDON: Correct. And would  
10 not include any Foundation money whatsoever.

11 ATTORNEY SIMON: Thank you.

12 With that clarification and the fact  
13 that the Bondholder Representative stated in their  
14 papers that they had a different interpretation of  
15 operating losses, the Debtors have determined in  
16 consultation with the committee that the last bid  
17 submitted by the Bondholder Representatives is no  
18 longer the highest or otherwise best bid.

19 Instead, the last bid submitted by the  
20 University of Iowa on the record on October 10th  
21 has been determined to be the current highest or  
22 otherwise best bid.

23 This also necessarily means that the  
24 Bondholder Representative bid, which was previously  
25 determined to be the successful bid or the winning



1 bid at the auction, is no longer the successful bid  
2 or the winning bid.

3 At this point, I will turn back to you,  
4 Mr. Gordon, from the University of Iowa, to see if  
5 you have any modifications to your current bid or  
6 otherwise wish to make any statements for the  
7 record.

8 ATTORNEY GORDON: Sure, we do. Again,  
9 David Gordon with Polsinelli on behalf of the State  
10 University of Iowa.

11 Since October 10th when the Debtors  
12 filed the notice of auction results designating  
13 Preston Hollow's credit bid, the Bondholder  
14 Representative credit bid as the winning bid, the  
15 State University of Iowa has continued to monitor  
16 the situation of this bankruptcy.

17 The University of Iowa Healthcare  
18 Leadership, Board of Regents, State of Iowa believe  
19 that the providers and staff members of  
20 Mercy Iowa City who serve our community are  
21 invaluable essential partners.

22 Consistent with its commitment to  
23 maintaining sustainable access to care and  
24 healthcare workforce, and in light of the current  
25 impasse among the parties to this bankruptcy court

1 proceeding, the State University of Iowa is willing  
2 to intercede to preserve the legacy of Mercy  
3 Iowa City.

4 The University hereby reinstates the bid  
5 in the following manner: If the University is  
6 chosen as with winning bidder, and subject to the  
7 acquisition being approved as the winning bidder by  
8 the bankruptcy court within a reasonable period of  
9 time, the satisfaction of all the closing  
10 conditions in our asset purchase agreement  
11 including licensure, and entering into an employee  
12 leaseback with the Debtors until such time as the  
13 transaction can reasonably close, which the  
14 University anticipates will occur on or before  
15 January 31, 2024, we reinstate our bid.

16 The purchase price will be an amount  
17 equal to \$28 million, plus an amount equal to the  
18 Debtors' actual operating losses exclusive of  
19 professional fees and all other costs and expenses  
20 the relating to the bankruptcy that are not already  
21 otherwise covered by the Debtors' cash and other  
22 investments for the period commencing on  
23 December 1, 2023, and continuing until such time as  
24 the transaction closes.

25 For the avoidance of doubt, calculation

1 of the Debtors' operating losses shall in no way  
2 take into account any funds made available to the  
3 Debtors by the Mercy Iowa City Foundation.

4 In addition to that cash component just  
5 stated, if University is chosen as the winning  
6 bidder, it commits to invest at least \$25 million  
7 on information technology infrastructure, physical  
8 plant infrastructure, including but not limited to  
9 the roof, parking facility, plant equipment, and  
10 medical equipment. The University will make this  
11 \$25 million investment within five years of  
12 closing.

13 The University submits this bid in  
14 recognition and appreciation of the profound  
15 contribution that Mercy Hospital has made and will  
16 continue to make to the community. We look forward  
17 to continuing the mission of Mercy Iowa City,  
18 supporting its loyal staff and healthcare  
19 professionals through what has been a trying time  
20 and we stand with Mercy Iowa City and its employees  
21 and staff.

22 ATTORNEY SIMON: I'd like to go off the  
23 record for five minutes just to have a quick break  
24 with our team.

25 (Off the record at 10:20 a.m.)

1 (Back on the record at 11:27 a.m.)

2 ATTORNEY SIMON: We're back on the  
3 record. We appreciate everyone's patience during  
4 that break.

5 We do want to make one clarification for  
6 the record with respect to the last bid from the  
7 University of Iowa. I'll make it now.

8 With respect to the assets being  
9 purchased. To the extent that actual operating  
10 disbursements are greater than actual operating  
11 receipts, then the University agrees to fund the  
12 difference post-December 1st without regard to the  
13 Debtors' Foundation funds or the Debtors' cash on  
14 hand as of that date as of December 1st.

15 That funding commitment does not include  
16 any agreement to fund by the University of  
17 restructuring professional fees of the Debtors  
18 during this period.

19 David, can you confirm that statement on  
20 behalf of the University?

21 ATTORNEY GORDON: I confirm that  
22 statement on behalf of the University. That is our  
23 understanding of our commitment to fund the  
24 operating expenses.

25 ATTORNEY SIMON: So with that

1 clarification and statements made on the record,  
2 the Debtors deem the University of Iowa's bid to be  
3 highest or otherwise best bid.

4 I will now turn to Nathan, the  
5 Bondholder Representatives, to determine whether  
6 you wish to submit a topping bid.

7 ATTORNEY COCO: Before I address that  
8 question, Dan -- thank you -- let me ask Corbin and  
9 JD, do you think it's appropriate for us to have a  
10 caucus or recess here or are you comfortable with  
11 us proceeding?

12 MR. DINAN: PHC as Bondholder  
13 Representative is comfortable proceeding.

14 MR. CONNELL: Computershare likewise is  
15 comfortable proceeding. Thank you.

16 ATTORNEY COCO: So with that, I'll  
17 address your question as follows.

18 Let me first state for the record, this  
19 is Nathan Coco on behalf of the Preston Hollow  
20 Community Capital, Inc. and Bondholder  
21 Representatives, and Computershare Trust Company,  
22 NA, as master trustee, which I will refer to  
23 collectively as the Secured Bondholder  
24 Representatives.

25 I'm joined in this proceeding by Corbin

1 Connell from Computershare who serves as the master  
2 trustee, and by John Dinan on behalf of Preston  
3 Hollow.

4 We would like to state for the record  
5 and for the avoidance of doubt, that the Secured  
6 Bondholder Representatives' final bid at the  
7 auction convened on October 10, 2023 was for the  
8 payment of the breakup fee, plus \$29 million  
9 consisting of, one, \$27.8 million credit bid; two,  
10 a \$1.2 million cash bid to be satisfied through the  
11 backstop of operating losses up to that amount  
12 incurred by Mercy Hospital, Iowa City, Iowa for the  
13 for the period of November 15 through November 30;  
14 three, a further commitment to backstop operating  
15 losses incurred by Mercy for the period of  
16 December 1, 2023 through the closing date.

17 The credit bid was for all of the  
18 purchased assets, as that term is defined in the  
19 credit bid asset purchase agreement, as well as  
20 Mercy's interest in certain clinics and parking  
21 lots, but excluding the medical office building  
22 referred to as the MOB2 and adjacent parking lot.

23 The bid was subject to satisfaction of  
24 all contractual closing conditions and the Secured  
25 Bondholder's credit bid asset purchase agreement.

1 For the further avoidance of doubt, the  
2 the backstop commitment incorporated in the Secured  
3 Bondholder Representative's bid is different from  
4 what the University and the Debtors have just  
5 described with respect to the University's bid.

6 The backstop commitment incorporated in  
7 the Secured Bondholder Representative's bid was to  
8 advance funds to the Debtors' bankruptcy estates  
9 for the specific amounts by which Mercy's operating  
10 expenses exceeded its available funds to pay such  
11 expenses including Mercy's available cash on hand  
12 and any funds contributed to Mercy by the  
13 Foundation.

14 The Secured Bondholder Representatives  
15 are willing to increase their credit bid by  
16 \$1 million. But to be clear, the Secured  
17 Bondholder Representatives will not alter or  
18 increase the amount of their bid, nor will the  
19 Secured Bondholder Representatives agree to or  
20 close a transaction with the Debtors either as a  
21 bidder, a backup bidder, or otherwise, if such bid  
22 does not provide for the application of Mercy's  
23 cash on hand and funds contributed by the  
24 Foundation in determining operating losses.

25 From the Secured Bondholder

1 Representative's perspective, any transaction that  
2 is not inclusive of Mercy's cash on hand and  
3 Foundation funds for purposes of determining  
4 operating losses is not financially viable, does  
5 not comport with the bid they proffered at the  
6 auction convened on October 10th, and the Secured  
7 Bondholder Representatives will not move forward on  
8 that basis.

9 The Secured Bondholder Representatives  
10 reserve all of their rights in connection with this  
11 auction and the sale process.

12 ATTORNEY SIMON: Thank you, Nathan.

13 Based upon the statements made on the  
14 record today, the Debtors in consultation with the  
15 committee determine that the bid from the  
16 University of Iowa is the winning bid or successful  
17 bid at the auction.

18 I'll say as a part of this determination  
19 the Debtors take very seriously their fiduciary  
20 duties and the power granted to the Debtors under  
21 the bidding procedures order.

22 That's in part why we believed it  
23 appropriate to reopen the auction today.

24 The bid submitted by the Bondholder  
25 Representatives as described by Mr. Coco, after



1 accounting for the fact that it required use of all  
2 of the remaining funds, including Foundation funds  
3 and cash on hand, meant that this bid is not a  
4 viable alternative.

5 The bidding procedures grant broad  
6 discretion to the Debtors, including the specific  
7 ability of the Debtors to reject at any time before  
8 entry of an order of the court approving a winning  
9 bids, any bid that the Debtors determine is, 1,  
10 inadequate or insufficient; 2 not in conformity  
11 with the requirements of the bankruptcy codes  
12 and/or bidding procedures; or 3, contrary to the  
13 best interest of the Debtor, their estate, their  
14 creditors, and other stakeholders.

15 Under this power, the Debtors do not  
16 believe that any bid that requires use of the  
17 Debtors' remaining cash and Foundation cash prior  
18 to closing is a viable transaction under the  
19 circumstances. Therefore, the Debtors reject the  
20 bid of the Bondholder Representatives as stated.

21 The Debtors deem the winning bidder to  
22 be the University of Iowa based upon the terms  
23 stated on the record which will remain subject to  
24 definitive documentation and approval of the  
25 bankruptcy court.

1 Does anyone else wish to say anything  
2 for the record at this point?

3 With that, I'd like to thank all of  
4 parties for their cooperation and attention in  
5 these important matters.

6 As you know, the Debtors have been very  
7 focused on ongoing patient care in the midst of  
8 these bankruptcy proceedings which has not always  
9 been an easy task.

10 We thank both of the bidding parties.  
11 We believe that the transaction with the University  
12 of Iowa will go a long way to restoring confidence  
13 in the Debtors' employees and ensuring ongoing  
14 patient care in the community for many years to  
15 come.

16 The Debtors will be filing shortly an  
17 amended notice of auction results. I will report  
18 these results to the court at the hearing this  
19 afternoon.

20 We also intend to notice up a sale  
21 hearing for November 5th.

22 Thank you, everyone. We're off the  
23 required.

24 (Auction concluded at 11:34 a.m.)  
25

CERTIFICATE OF NOTARY

STATE OF MICHIGAN )

) SS

COUNTY OF WAYNE )

I, RENEE J. OGDEN, certify that the foregoing was recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.

*Renee J. Ogden*

RENEE J. OGDEN, CSR-3455

Notary Public,

Wayne County, Michigan

My Commission expires: June 21, 2025

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Lgrikis@polsinelli.com  
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Rleaf@nyemaster.com  
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